

**REQUEST FOR COMMENTS
CONCERNING PROPOSED ALTERNATIVE METHOD OF SETTING HEARINGS**

I am considering an alternative procedure that would allow counsel to set their own hearings on motions filed in Division H-2 of the United States Bankruptcy Court for the Southern District of Texas. This would be only an alternative procedure, elected (or not) by the movant when the motion is filed. I have attached a draft protocol for those procedures. If you have any comments concerning the proposal, please send your comments in writing, not later than November 30, 2003, to:

Bankruptcy Judge Wesley Steen
515 Rusk
Houston, Texas 777002

NOTE THAT THIS PROCEDURE IS NOT YET EFFECTIVE.

The court will consider comments from the bar and will institute the procedure (or not) beginning about January 1, 2004. If the proposal is instituted, announcements will be made to the bar association and on this web page.

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ALTERNATIVE PROCEDURES FOR SETTING HEARINGS
IN DIVISION H2 FOR CERTAIN LIMITED MATTERS

ATTORNEYS MAY “SELF-SET” HEARINGS FOR CERTAIN MATTERS

1. **These procedures are optional. Movants may elect to use these procedures or movants may elect not to. Parties may use these procedures in all contested matters in the Houston division H2 (including objections to claims) EXCEPT:**
 - a. These procedures do not apply to cases designated as complex chapter 11 cases.
 - b. These procedures do not apply to motions for relief from the stay.
 - c. These procedures do not apply to chapter 13 confirmation hearings, motions to dismiss chapter 13 cases, or motions to modify a chapter 13 plan.
 - d. See the last paragraph in this section for the use of these procedures in Laredo and Victoria.
2. **Hearings and notice for motions that do not require expedited or emergency relief.**
 - a. Contact opposing party/counsel. First, contact appropriate parties/counsel to determine whether you expect the motion to be opposed, and to estimate the time required for a hearing. If opposing counsel authorizes you to state that there will be no objection, the motion should say so.
 - b. Default expected. If no objection is anticipated, there is no need for alternative procedures and the motion should be filed with the general “negative notice” language of local rule 9013.
 - i. The Court will diary the motion and, if no objection is filed, the Court will either issue a default order or will set the matter for hearing if the court believes that a default order is not appropriate without further inquiry. The Court will usually act within 35 days after the date that the motion was filed.
 - ii. If an objection is filed or if the court determines that a default is not appropriate without further inquiry, the Court will set the matter for a hearing or status conference on an Omnibus Hearing Calendar, usually about 45 days after the motion was filed, with about 7 days’ notice of the hearing .

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- c. Hearing necessary, but short hearing sufficient. If the movant anticipates that a hearing will be necessary, but estimates that 15 minutes or less will be sufficient for the hearing, the movant may, by notice set out at the beginning of the motion when it is filed with the Court, set the matter for hearing on any of the Court's Omnibus Hearing Calendars.
- i. The date that movant chooses for the hearing must be at least 30 days after the date that the movant files the motion and gives notice of the hearing, and
 - ii. The hearing date must be set forth prominently at the beginning of the motion (in the format set forth below):

CAUTION: A HEARING DATE IS SET IN THIS MATTER

THIS PLEADING SEEKS A COURT ORDER THAT MAY AFFECT YOU OR YOUR PROPERTY. IF YOU OBJECT TO THE RELIEF REQUESTED, YOU SHOULD CONTACT THE MOVANT TO TRY TO REACH AN AGREEMENT. IF YOU CANNOT REACH AN AGREEMENT, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVANT WITHIN 20 DAYS OF THE DATE THAT YOU WERE SERVED WITH THIS PLEADING. OTHERWISE THE COURT MAY GRANT THE RELIEF REQUESTED WITHOUT FURTHER NOTICE TO YOU. IF YOU FILE A RESPONSE, YOU MUST STATE IN THE RESPONSE WHY YOU BELIEVE THAT THE MOTION SHOULD NOT BE GRANTED. UNLESS THE COURT GRANTS A DEFAULT ORDER. THE COURT WILL CONDUCT A HEARING ON THIS MATTER ON THE ____ DAY OF _____, 200__ AT _____.M. THIS WILL NOT BE AN EVIDENTIARY HEARING UNLESS THE PARTIES AGREE IN ADVANCE TO PRESENT EVIDENCE AND AGREE THAT THE ENTIRE EVIDENTIARY HEARING WILL TAKE LESS THAN 15 MINUTES.

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- d. Long hearing needed. If the movant concludes that a long hearing will be required, then prior to filing the motion counsel may contact the court's case manager and ask for a hearing date. Counsel should give the case manager a time estimate for the hearing, based on conversations with anticipated adverse parties. The case manager will provide the movant with a hearing date by telephone or e-mail (or the case manager may direct counsel to set the matter for a status conference, or give other instructions). If the movant elects this method of self-setting the hearing, the motion must use the following alternative form of notice, immediately below the title:

CAUTION: A HEARING DATE IS SET IN THIS MATTER

THIS PLEADING SEEKS A COURT ORDER THAT MAY AFFECT YOU OR YOUR PROPERTY. IF YOU OBJECT TO THE RELIEF REQUESTED, YOU SHOULD CONTACT THE MOVANT TO TRY TO REACH AN AGREEMENT. IF YOU CANNOT REACH AN AGREEMENT, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVANT WITHIN 20 DAYS OF THE DATE THAT YOU WERE SERVED WITH THIS PLEADING. OTHERWISE THE COURT MAY GRANT THE RELIEF REQUESTED WITHOUT FURTHER NOTICE TO YOU. IF YOU FILE A RESPONSE, YOU MUST STATE IN THE RESPONSE WHY YOU BELIEVE THAT THE MOTION SHOULD NOT BE GRANTED. IF YOU FILE A RESPONSE. THE COURT WILL CONDUCT A HEARING ON THIS MATTER ON THE ____ DAY OF _____, 200__ AT _____.M. THIS WILL BE AN EVIDENTIARY HEARING. ANY PARTY INTENDING TO PRESENT EVIDENCE MUST DELIVER A WITNESS AND EXHIBIT LIST TO OPPOSING COUNSEL AT LEAST TWO BUSINESS DAYS PRIOR TO THE HEARING. EXHIBITS MUST BE ATTACHED TO THE LIST. COURTESY COPIES OF THE LISTS AND EXHIBITS MUST BE SUPPLIED TO CHAMBERS WHEN THEY ARE EXCHANGED.

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3. Emergency And Expedited Motions.

- a. It is important for counsel and parties to use great discretion when using these emergency and expedited procedures. Do not use these procedures unless there is truly a need for emergency and expedited relief. Simple neglect in failing to file the motion in time to allow requisite notice is not a good reason for an emergency or expedited hearing.
- b. Check the Court's Omnibus Hearing Calendar (which can be found on the Southern District of Texas website.) Determine the hearing date that will be timely to address the need for expedited consideration, but will allow maximum notice and opportunity to be heard.
 - i. Example: Suppose that the debtor owns perishable inventory which will spoil on November 15. The Court's web page shows Omnibus Hearing Calendars on October 31, November 7, and November 14. Counsel should choose November 14.
- c. When the matter is called for hearing, the Court will first inquire into the nature of the emergency, the reason why normal hearing procedures were not adequate, and what notice has been given to opposing parties. The Court may issue appropriate orders to assure all interested parties adequate notice and opportunity to be heard.
- d. If the movant elects this method of self-setting the hearing, the motion must contain the following alternative form of notice immediately below the title:

EMERGENCY/EXPEDITED HEARING SET ON REDUCED NOTICE

CAUTION: AN EXPEDITED HEARING DATE IS SET IN THIS MATTER

THIS PLEADING SEEKS A COURT ORDER THAT MAY AFFECT YOU OR YOUR PROPERTY. IF YOU OBJECT TO THE RELIEF REQUESTED, YOU SHOULD CONTACT THE MOVANT TO TRY TO REACH AN AGREEMENT. IF YOU CANNOT REACH AN AGREEMENT, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVANT WITHIN 20 DAYS OF THE DATE THAT YOU WERE SERVED WITH THIS PLEADING. OTHERWISE THE COURT MAY GRANT THE RELIEF REQUESTED WITHOUT FURTHER NOTICE TO YOU. IF YOU FILE A RESPONSE, YOU MUST STATE IN THE RESPONSE WHY YOU BELIEVE THAT THE MOTION SHOULD NOT BE GRANTED. THE COURT WILL CONDUCT A HEARING ON THIS MATTER ON THE ____ DAY OF _____, 200__ AT _____.M. THIS WILL BE AN EVIDENTIARY HEARING. ANY PARTY INTENDING TO PRESENT EVIDENCE MUST DELIVER A WITNESS AND EXHIBIT LIST TO OPPOSING COUNSEL AT LEAST TWO BUSINESS DAYS PRIOR TO THE HEARING. EXHIBITS MUST BE ATTACHED TO THE LIST. COURTESY COPIES OF THE LISTS AND EXHIBITS MUST BE SUPPLIED TO CHAMBERS WHEN THEY ARE EXCHANGED.

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4. **Alternative procedures in Laredo and Victoria divisions.** These alternative procedures may be used for cases in the Laredo and Victoria divisions except that all hearing dates in Laredo and Victoria are considered Omnibus Hearing Calendars. The Court will not designate specific days. Therefore, the matter may be set on any date that the Court will be in Laredo or Victoria.
- a. CAUTION: The Court publishes on this web site a list of days that the Court anticipates being in Laredo and Victoria. However, sometimes the web site does not reflect cancellations. Therefore, before self-setting a hearing date, counsel should check with the Court's case manager.

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